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January 5, 2005

By Facsimile to 202/219-3923

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20004

Re: MUR 5612 - Response to Complaint on behalf of Service
Employees International Union

Dear Sir or Madam:

The Service Employees International Union, AFL-CIO ("SEIU") submits this response to the complaint filed against it by the National Right To Work Legal Defense and Education Foundation, Inc. ("Foundation") in this matter. The Commission should take no action against SEIU on the basis of the complaint because the complaint does not "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 CFR §111.4((d)(3).

The only facts alleged in the complaint with respect to SEIU are as follows: (1) SEIU planned to spend and did spend \$65 million "on political matters" (§ 3); (2) that a portion of these expenditures were in the form of contributions to America Coming Together ("ACT") (§ 4)¹; and (3) at least a portion of the contributions to ACT were made from the general treasury funds of SEIU. (§ 5) With respect to ACT, the complaint further alleges (4) that ACT held a political fundraiser in Cincinnati, Ohio to raise funds for the Democratic National Committee to support federal candidates. (§§ 6-7), and

(§8) These "facts" fail to describe any violation of federal election law by SEIU.

¹ Although the complaint is silent on this point, ACT's reports to the Commission make clear that SEIU made no contributions from its treasury account to ACT's federally registered political committee. All of SEIU's contributions were to ACT's non-federal account.

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1. The fact that SEIU may have made expenditures "on political matters" does not in itself provide any basis for a complaint under federal election law. Under the Federal Election Campaign Act, it is completely lawful for a labor organization to engage in "political matters" such as lobbying, voter education, voter registration and get-out-the-vote drives, provided that the union does not make public communications that expressly advocate the election or defeat of a federal candidate, *see* 11 CFR § 114.2(b)(ii), or constitute electioneering communications. *See* 11 CFR § 114.2(b)(iii). The Foundation's complaint does not allege that SEIU made any public communications containing express advocacy or constituting electioneering communications.² A labor organization may also violate federal election law if it engages in coordinated communications or otherwise coordinates its expenditures with federal candidates or political parties. *See* 11 CFR §§ 109.20 and 109.21. The complaint does not allege any such violation. Thus, insofar as the complaint purports to allege a violation by SEIU through its own political activities, it is devoid of any facts on which the Commission may take action.

2. With respect to the allegation that ACT violated federal election law by raising funds for the Democratic National Committee to support federal candidates, the complaint does not allege that SEIU was involved in any way in the planning, administration, or financing of this fundraising event, or that the union was even aware that it took place. Furthermore, we understand that ACT denies that the event raised any funds for the DNC.

3.

² The statement in the press release attached as Exhibit A to the complaint concerning SEIU's spending for "federal independent expenditures" refers to independent expenditures made by SEIU's federally registered separate segregated fund, Service Employees International Union Committee on Political Education ("SEIU-COPE"), as set forth in the fund's reports to the Commission. Similarly, all of SEIU's "direct contributions to worker-friendly candidates, campaigns and organizations" referenced in the press release were contributions made by SEIU-COPE to federal candidates and reported as such to the Commission, or were contributions to non-federal candidates. No general treasury funds were used to support independent expenditures or contributions to federal candidates, and the complaint contains no allegations to the contrary.

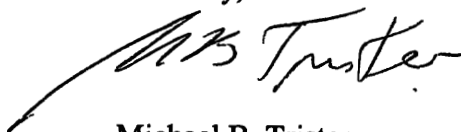
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As the complaint , makes clear, the Foundation's real concern is that SEIU is using compulsory member dues to support political activity, an issue which is properly addressed, if at all, under the federal labor laws and not federal election law. If the facts in the complaint are deemed sufficient to allege a violation by SEIU of election law, then the complaint is equally sufficient to allege violations by the hundreds or thousands of other donors to ACT. This is not the law, and the complaint against SEIU should therefore be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "MB Trister", with a long, sweeping horizontal line extending to the left.

Michael B. Trister

cc: Robert Weinberg, Esq.
John Sullivan, Esq.

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